SUBCHAPTER III. CRIMINAL PROCESS.

Article 17.

Criminal Process.

§ 15A-301. Criminal process generally.

(a) Formal Requirements. –

(1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk in either paper form or in electronic form in the Electronic Repository as provided in G.S. 15A-301.1.

(2) Criminal process, other than a citation, must be signed and dated by the justice, judge, magistrate, or clerk who issues it. The citation must be signed and dated by the law-enforcement officer who issues it.

(b) To Whom Directed. – Warrants for arrest and orders for arrest must be directed to a particular officer, a class of officers, or a combination thereof, having authority and territorial jurisdiction to execute the process. A criminal summons must be directed to the person summoned to appear and must be delivered to and may be served by any law-enforcement officer having authority and territorial jurisdiction to make an arrest for the offense charged, except that in those instances where the defendant is called into a law-enforcement agency to receive a summons, any employee so designated by the agency's chief executive officer may serve a criminal summons at the agency's office. The citation must be directed to the person cited to appear.

(b1) **(For effective date, see note)** Approval by District Attorney; school personnel. – Notwithstanding any other provision of law, no warrant for arrest, order for arrest, criminal summons, or other criminal process shall be issued by a magistrate against a school employee, as defined in G.S. 14-33(c)(6), for an offense that occurred while the school employee was in the process of discharging his or her duties of employment, without the prior written approval of the district attorney or the district attorney's designee. For purposes of this subsection, the term "district attorney" means the person elected to the office of district attorney. This subsection does not apply if the offense is a traffic offense or if the offense occurred in the presence of a sworn law enforcement officer. The district attorney may decline to accept the authority set forth in this subsection; in such case, the procedure and review authority shall be as set forth in subsection (b2) of this section.

(b2) **(For effective date, see note)** Magistrate review; school personnel. – A district attorney may decline the authority provided under subsection (b1) of this section by transmitting a letter so indicating to the chief district court judge. Upon receipt of a letter from the district attorney declining the authority provided in subsection (b1) of this section, the chief district court judge shall appoint a magistrate or magistrates to review any application for a warrant for arrest, order for arrest, criminal summons, or other criminal process against a school employee, as defined in G.S. 14-33(c)(6), where the allegation is that the school employee committed a misdemeanor offense while discharging his or her duties of employment. The failure to comply with any of the requirements in this subsection shall not affect the validity of any warrant, order, summons, or other criminal process. The following exceptions apply to the requirements in this subsection:

(1) The offense is a traffic offense.

(2) The offense occurred in the presence of a sworn law enforcement officer.

(3) There is no appointed magistrate available to review the application.

(c) Service. –

(1) A law-enforcement officer or other employee designated as provided in subsection (b) receiving for service or execution a criminal process that was first created and exists only in paper form must note thereon the date and time of its receipt. A law enforcement officer receiving a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in that section. Upon execution or service, a copy of the process must be delivered to the person arrested or served.

(2) A corporation may be served with criminal summons as provided in G.S. 15A-773.

(d) Return. –

(1) The officer or other employee designated as provided in subsection (b) who serves or executes a criminal process that was first created and exists only in paper form must enter the date and time of the service or execution on the process and return it to the clerk of court in the county in which issued. The officer or other employee designated as provided in subsection (b) of this section who serves or executes a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall promptly cause the date of the service or execution to be recorded as provided in that section.

(2) If criminal process that was created and exists only in paper form is not served or executed within a number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with a reason for the failure of service or execution noted thereon.

a. Warrant for arrest – 180 days.

b. Order for arrest – 180 days.

c. Criminal summons – 90 days or the date the defendant is directed to appear, whichever is earlier.

(3) Failure to return the process to the clerk as required by subdivision (2) of this subsection does not invalidate the process, nor does it invalidate service or execution made after the period specified in subdivision (2).

(4) The clerk to which return of a criminal process that was created and exists only in paper form is made may redeliver the process to a law-enforcement officer or other employee designated as provided in subsection (b) for further attempts at service. If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.

(e) Copies to Be Made by Clerk. –

(1) The clerk may make a certified copy of any criminal process that was created and exists only in paper form filed in his office pursuant to subsection (a) when the original process has been lost or when the process has been returned pursuant to subdivision (d)(2). The copy may be executed as effectively as the original process whether or not the original has been redelivered as provided in G.S. 15A-301(d)(4).

(2) When criminal process is returned to the clerk pursuant to subdivision (d)(1) and it appears that the appropriate venue is in another county, the clerk must make and retain a certified copy of the process and transmit the original process to the clerk in the appropriate county.

(3) Upon request of a defendant, the clerk must make and furnish to him without charge one copy of every criminal process filed against him.

(4) Nothing in this section prevents the making and retention of uncertified copies of process for information purposes under G.S. 15A-401(a)(2) or for any other lawful purpose.

(f) Protection of Process Server. – An officer or other employee designated as provided in subsection (b), and serving process as provided in subsection (b), receiving under this section or under G.S. 15A-301.1 criminal process which is complete and regular on its face may serve the process in accordance with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

(g) Recall of Process – Authority. – A criminal process that has not been served on the defendant, other than a citation, shall be recalled by a judicial official or by a person authorized to act on behalf of a judicial official as follows:

(1) A warrant or criminal summons shall be recalled by the issuing judicial official when that official determines that probable cause did not exist for its issuance.

(2) Any criminal process other than a warrant or criminal summons may be recalled for good cause by any judicial official of the trial division in which it was issued. Good cause includes, without limitation, the fact that:

a. A copy of the process has been served on the defendant.

b. All charges on which the process is based have been disposed.

c. The person named as the defendant in the process is not the person who committed the charged offense.

d. It has been determined that grounds for the issuance of an order for arrest did not exist, no longer exist or have been satisfied.

(3) The disposition of all charges on which a process is based shall effect the recall, without further action by the court, of that process and of all other outstanding process issued in connection with the charges, including all orders for arrest issued for the defendant's failure to appear to answer the charges.

When the process was first created and exists only in paper form, the recall shall promptly be communicated by any reasonable means to each law enforcement agency known to be in possession of the original or a copy of the process, and each agency shall promptly return the process to the court, unserved. When the process is in the Electronic Repository, the recall shall promptly be entered in the Electronic Repository, and no further copies of the process shall be printed in paper form. The recall shall also be communicated by any reasonable means to each agency that is known to be in possession of a copy of the process in paper form and that does not have remote electronic access to the Electronic Repository. (1868-9, c. 178, subch. 3, s. 4; Code, s. 1135; Rev., s. 3159; C.S., s. 4525; 1957, c. 346; 1969, c. 44, s. 28; 1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, ss. 136, 137; 1979, c. 725, ss. 1-3; 1989, c. 262, s. 3; 2002-64, s. 3; 2012-149, s. 5.)

§ 15A-301.1. Electronic Repository.

(a) The Administrative Office of the Courts shall create and maintain, in cooperation with State and local law enforcement agencies, an automated electronic repository for criminal process (hereinafter referred to as the Electronic Repository), which shall comprise a secure system of electronic data entry, storage, and retrieval that provides for creating, signing, issuing, entering, filing, and retaining criminal process in electronic form, and that provides for the following with regard to criminal process in electronic form:

(1) Tracking criminal process.
(2) Accessing criminal process through remote electronic means by all authorized judicial officials and employees and all authorized law enforcement officers and agencies that have compatible electronic access capacity.
(3) Printing any criminal process in paper form by any authorized judicial official or employee or any authorized law enforcement officer or agency.

The Administrative Office of the Courts shall assure that all electronic signatures effected through use of the system meet the requirements of G.S. 15A-101.1(5).

(b) Any criminal process may be created, signed, and issued in electronic form, filed electronically in the office of a clerk of superior court, and retained in electronic form in the Electronic Repository.

(c) Any process that was first created, signed, and issued in paper form may subsequently be filed in electronic form and entered in the Electronic Repository by the judicial official who issued the process or by any person authorized to enter it on behalf of the judicial official. All copies of the process in paper form are then subject to the provisions of subsections (i) and (k) of this section.

(d) Any criminal process in the Electronic Repository shall be part of the official records of the clerk of superior court of the county for which it was issued and shall be maintained in the office of that clerk as required by G.S. 15A-301(a).

(e) Any criminal process in the Electronic Repository may, at any time and at any place in this State, be printed in paper form and delivered to a law enforcement agency or officer by any judicial official, law enforcement officer, or other authorized person.

(f) When printed in paper form pursuant to subsection (e) of this section, any copy of a criminal process in the Electronic Repository confers the same authority and has the same force and effect for all other purposes as the original of a criminal process that was created and exists only in paper form.

(g) Service of any criminal process in the Electronic Repository may be effected by delivering to the person to be served a copy of the process that was printed in paper form pursuant to subsection (e) of this section.

(h) The tracking information specified in subsection (i) of this section shall promptly be entered in the Electronic Repository when one or both of the following occurs:

(1) A process is first created, signed, and issued in paper form and subsequently entered in electronic form in the Electronic Repository as provided in subsection (c) of this section.
(2) A copy of a process in the Electronic Repository is printed in paper form pursuant to subsection (e) of this section.

(i) The following tracking information shall be entered in the Electronic Repository in accordance with subsections (c) and (h) of this section:

(1) The date and time when the process was printed in paper form.
(2) The name of the law enforcement agency by or for which the process was printed in paper form.
(3) If available, the name and identification number of the law enforcement officer to whom any copy of the process was delivered.

(j) The service requirements set forth in subsection (k) of this section shall apply to:

(1) Each copy of a criminal process that is first created in paper form and subsequently entered into the Electronic Repository as provided in subsection (c) of this section.
(2) Each copy of a criminal process in the Electronic Repository that is printed in paper form pursuant to subsection (e) of this section.

(k) Service Requirements for Process Entered in the Electronic Repository. – The copy of the process shall be served not later than 24 hours after it has been printed. The date, time, and place of service shall promptly be recorded in the Electronic Repository and shall be part of the official records of the court. If the process is not served within 24 hours, that fact shall promptly be recorded in the Electronic Repository and all copies of the process in paper form shall be destroyed. The process may again be printed in paper form at later times and at the same or other places. Subsection (f) of this section applies to each successively printed copy of the process. When service of the warrant is no longer being actively pursued, that fact shall be promptly recorded in the Electronic Repository.

(*l*) A law enforcement officer or agency that does not have compatible remote access to the Electronic Repository shall promptly communicate, by any reasonable means, the information required by subsection (k) of this section to the clerk of superior court of the county in which the process was issued or to any other person authorized to enter information into the Electronic Repository, and the information shall promptly be entered in the Electronic Repository.

(m) Failure to enter any information as required by subsection (i) or (k) of this section does not invalidate the process, nor does it invalidate service or execution made after the period specified in subsection (k) of this section.

(n) A warrant created and existing only in paper form is returned within the meaning of G.S. 132-1.4(k) when it is returned as provided in G.S. 15A-301(d). A warrant that exists only in electronic form in the Electronic Repository is returned within the meaning of G.S. 132-1.4(k), when it has been served or when service of the warrant is no longer being actively pursued, as either fact is entered in the Electronic Repository pursuant to subsection (k) of this section.

(o) At the time an individual is taken into custody, the custodial law enforcement agency shall attempt to identify all outstanding warrants against that individual and notify the appropriate law enforcement agencies of the location of the individual.

(p) Prior to the entry of any order of the court in a criminal case, the court shall attempt to identify all outstanding warrants against that individual, if in custody, and notify the appropriate law enforcement agencies of the location of the individual. (2002-64, s. 2; 2015-48, s. 1; 2017-101, s. 1.)

§ 15A-302. Citation.

(a) Definition. – A citation is a directive, issued by a law enforcement officer or other person authorized by statute, that a person appear in court and answer a misdemeanor or infraction charge or charges.

(b) When Issued. – An officer may issue a citation to any person who he has probable cause to believe has committed a misdemeanor or infraction.

(c) Contents. – The citation must:
(1) Identify the crime charged, including the date, and where material, identify the property and other persons involved,
(2) Contain the name and address of the person cited, or other identification if that cannot be ascertained,

(3) Identify the officer issuing the citation, and
(4) Cite the person to whom issued to appear in a designated court, at a designated time and date.

(d) Service. – A copy of the citation shall be delivered to the person cited who may sign a receipt on the original which shall thereafter be filed with the clerk by the officer. If the cited person refuses to sign, the officer shall certify delivery of the citation by signing the original, which shall thereafter be filed with the clerk. Failure of the person cited to sign the citation shall not constitute grounds for his arrest or the requirement that he post a bond. When a citation is issued for a parking offense, a copy shall be delivered to the operator of a vehicle who is present at the time of service, or shall be delivered to the registered owner of the vehicle if the operator is not present by affixing a copy of the citation to the vehicle in a conspicuous place.

(e) Dismissal by Prosecutor. – If the prosecutor finds that no crime or infraction is charged in the citation, or that there is insufficient evidence to warrant prosecution, he may dismiss the charge and so notify the person cited. An appropriate entry must be made in the records of the clerk. It is not necessary to enter the dismissal in open court or to obtain consent of the judge.

(f) Citation No Bar to Criminal Summons or Warrant. – If the offense is a misdemeanor, a criminal summons or a warrant may issue notwithstanding the prior issuance of a citation for the same offense. If a defendant fails to appear in court as directed by a citation that charges the defendant with a misdemeanor, an order for arrest for failure to appear may be issued by a judicial official.

(g) Preparation of Form. – The form and content of the citation is as prescribed by the Administrative Officer of the Courts. The form of citation used for violation of the motor vehicle laws must contain a notice that the driving privilege of the person cited may be revoked for failure to appear as cited, and must be prepared as provided in G.S. 7A-148(b). (1973, c. 1286, s. 1; 1975, c. 166, ss. 3, 27; 1983, c. 327, s. 4; 1985, c. 385; c. 764, s. 4; 1989, c. 243, s. 1; 2003-15, s. 1.)

§ 15A-303. Criminal summons.

(a) Definition. – A criminal summons consists of a statement of the crime or infraction of which the person to be summoned is accused, and an order directing that the person so accused appear and answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) Statement of the Crime or Infraction. – The criminal summons must contain a statement of the crime or infraction of which the person summoned is accused. No criminal summons is invalid because of any technicality of pleading if the statement is sufficient to identify the crime or infraction.

(c) Showing of Probable Cause; Record. – The showing of probable cause for the issuance of a criminal summons, and the record thereof, is the same as provided in G.S. 15A-304(d) for the issuance of a warrant for arrest.

(d) Order to Appear. – The summons must order the person named to appear in a designated court at a designated time and date and answer to the charges made against him and advise him that he may be held in contempt of court for failure to appear. Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the issuance or reissuance of the criminal summons.

(e) Enforcement. –
(1) If the offense charged is a criminal offense, a warrant for arrest, based upon the same or another showing of probable cause, may be issued by the same or

another issuing official, notwithstanding the prior issuance of a criminal summons.

(2) If the offense charged is a criminal offense, an order for arrest, as provided in G.S. 15A-305, may issue for the arrest of any person who fails to appear as directed in a duly executed criminal summons.

(3) A person served with criminal summons who willfully fails to appear as directed may be punished for contempt as provided in G.S. 5A-11.

(4) Repealed by Session Laws 1975, c. 166, s. 4.

(f) Who May Issue. – A criminal summons, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, ss. 4, 5; 1975, 2nd Sess., c. 983, s. 138; 1983, c. 294, s. 3; 1985, c. 764, s. 5.)

§ 15A-304. Warrant for arrest.

(a) Definition. – A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) When Issued. –

(1) Generally. – A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.

(2) Repealed by Session Laws 2018-40, s. 7.1. See editor's note for effective date and applicability.

(3) When Citizen-initiated. – If the finding of probable cause pursuant to subsection (d) of this section is based solely upon an affidavit or oral testimony under oath or affirmation of a person who is not a sworn law enforcement officer, the issuing official shall not issue a warrant for arrest and instead shall issue a criminal summons, unless one of the following circumstances exists:

a. There is corroborating testimony of the facts establishing probable cause from a sworn law enforcement officer or at least one disinterested witness.

b. The official finds that obtaining investigation of the alleged offense by a law enforcement agency would constitute a substantial burden for the complainant.

c. The official finds substantial evidence of one or more of the circumstances listed in subdivision (1) of this subsection.

(c) Statement of the Crime. – The warrant must contain a statement of the crime of which the person to be arrested is accused. No warrant for arrest, nor any arrest made pursuant thereto, is invalid because of any technicality of pleading if the statement is sufficient to identify the crime.

(d) Showing of Probable Cause. – A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an

independent judgment that there is probable cause to believe that a crime has been committed and that the person to be arrested committed it. The information must be shown by one or more of the following:

(1) Affidavit;
(2) Oral testimony under oath or affirmation before the issuing official; or
(3) Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.

If the information is insufficient to show probable cause, the warrant may not be issued. A judicial official shall not refuse to issue a warrant for the arrest of a person solely because a prior warrant has been issued for the arrest of another person involved in the same matter.

(e) Order for Arrest. – The order for arrest must direct that a law-enforcement officer take the defendant into custody and bring him without unnecessary delay before a judicial official to answer to the charges made against him.

(f) Who May Issue. – A warrant for arrest, valid throughout the State, may be issued by:

(1) A Justice of the Supreme Court.
(2) A judge of the Court of Appeals.
(3) A judge of the superior court.
(4) A judge of the district court, as provided in G.S. 7A-291.
(5) A clerk, as provided in G.S. 7A-180 and 7A-181.
(6) A magistrate, as provided in G.S. 7A-273. (1868-9, c. 178, subch. 3, ss. 1-3; Code, ss. 1132-1134; 1901, c. 668; Rev., ss. 3156-3158; C.S., ss. 4522-4524; 1955, c. 332; 1969, c. 44, s. 27; c. 1062, s. 1; 1973, c. 1286, s. 1; 1997-268, s. 2; 2004-186, s. 15.1; 2017-176, s. 5(a); 2018-40, s. 7.1.)

§ 15A-305. Order for arrest.

(a) Definition. – As used in this section, an order for arrest is an order issued by a justice, judge, clerk, or magistrate that a law-enforcement officer take a named person into custody.

(b) When Issued. – An order for arrest may be issued when:

(1) A grand jury has returned a true bill of indictment against a defendant who is not in custody and who has not been released from custody pursuant to Article 26 of this Chapter, Bail, to answer to the charges in the bill of indictment.
(2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.
(3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to G.S. 15A-303 or a citation issued by a law enforcement officer or other person authorized by statute pursuant to G.S. 15A-302 that charged the defendant with a misdemeanor.
(4) A defendant has violated the conditions of probation.

(5) In any criminal proceeding in which the defendant has become subject to the jurisdiction of the court, it becomes necessary to take the defendant into custody.
(6) It is authorized by G.S. 15A-803 in connection with material witness proceedings.
(7) The common-law writ of capias has heretofore been issuable.
(8) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.
(9) It is authorized by G.S. 5A-16 in connection with contempt proceedings.

(c) Statement of Cause and Order; Copy of Indictment. –
(1) The process must state the cause for its issuance and order an officer described in G.S. 15A-301(b) to take the person named therein into custody and bring him before the court. If the defendant is to be held without bail, the order must so provide.
(2) When the order is issued pursuant to subdivision (b)(1), a copy of the bill of indictment must be attached to each copy of the order for arrest.

(d) Who May Issue. – An order for arrest, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, s. 6; 1977, c. 711, s. 21; 2003-15, s. 2.)

§ 15A-306: Reserved for future codification purposes.

§ 15A-307: Reserved for future codification purposes.

§ 15A-308: Reserved for future codification purposes.

§ 15A-309: Reserved for future codification purposes.

§ 15A-310: Reserved for future codification purposes.